IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9133 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUNIL TRILOCHAN PANDA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

Mr.H.L.Jani, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/02/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order dt.19.7.99 passed by the Police Commissioner, Surat City whereby the petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985. The petitioner is detained as a PASA detenu at Bhuj Jail, Bhuj. The

learned A.G.P. has submitted that the petitioner's representation against the detention order was rejected and the Board has confirmed the detention order.The grounds enclosed with the detention order show that 3 criminal cases under Prohibition Act were registered against the petitioner at Police Station, Limbayat on 24.5.99, 19.6.99 and 12.7.99. In 2 out of these 3 cases, charge sheet has already been filed in the court and the same are pending trial; whereas one case was under investigation at the time when the detention order was passed. It is alleged against the petitioner that he is engaged in the business of unauthorised liquor and has been beating the persons, who come in his way of the aforesaid business. A reference has also been made to the statements made by 2 witnesses with regard to the incidents dated 6.6.99 and 13.6.99 and it has been recorded that the witnesses are not prepared to disclose their identity out of fear of the violent activities of the petitioner. The detaining authority has found that even while the petitioner was on bail, he continued his activities as a bootlegger and, therefore, it was necessary to detain the petitioner in order to prevent him from doing the business in unauthorised liquor and that his activities are also prejudicial to the public and harmful to the health.

Learned counsel for the petitioner has submitted that the allegations against the petitioner so as to be prejudicial to the public and harmful to the health are absolutely general and vague and the grounds of detention based on the pendency of criminal cases, as aforesaid, under the Prohibition Act do not constitute a case of breach of public order. The learned A.G.P. has failed to show as to how it is a case of breach of public order.

According to several decisions of the Supreme Court, even if all the allegations as have been levelled against the petitioner are taken to be correct on their face value, they do not constitute a case of breach of public order. At the most what can be said against the petitioner is that his activities may be prejudicial to the law and order. There is total absence of activities which can be said to be prejudicial to the public order.

Accordingly the detention order dt.19.7.99 passed by the Police Commissioner, Surat City therefore cannot be sustained in the eye of law.The same is hereby quashed and set aside. It is directed that the petitioner shall be released forthwith if not required to be detained otherwise under any other detention order or in any other criminal case. This Special Civil Application is

allowed. Rule is made absolute.

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